41

R# 570847

UNITED STATES DISTRICT COURT
FOR THE EAST DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Ex. A

THOMAS WENDORF,

Plaintiff,

vs.

JLG INDUSTRIES, INC.,

Defendant.

Case: 2:08-cv-12229
Judge: Steeh, George Caram
MJ: Whalen, R. Steven
Filed: 05-21-2008 At 01:31 PM
REM: WENDORF V. JLG IND INC (NH)

SAM SERRA (P30507)
Attorney for Plaintiff
43455 Schoenherr Road, Ste. 7
Sterling Heights, MI 48313-1972
(586) 323-4400

JON FEIKENS (P13339)
Attorney for Defendant
660 Woodward Ave., Ste. 700
Detroit, MI 48226
(313) 962-5909

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, the Defendant, JLG Industries, Inc., ["JLG"], hereby removes this action entitled Thomas Wendorf v JLG Industries, Inc., Case No: 2008-0555-NP, filed in the Circuit Court for the County of Macomb, State of Michigan, to the United States District Court, Eastern District of Michigan, based on the following grounds:

1. On or about February 6, 2008, the Plaintiff, Thomas Wendorf, commenced this action with the filing of a Summons and Complaint in the Circuit Court for the County of Macomb, State of Michigan. A copy of the Summons and Complaint is attached as Exhibit A.

2. On or about April 25, 2008, JLG received a copy of the Summons and Complaint.

3. Pursuant to 28 U.S.C. § 1332(a) this action is within the original jurisdiction

of this Court because this is a civil action where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between citizens of different states.

4. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon Defendants in this action are attached to this Notice of Removal.

5. Pursuant to § 1446(a), this Notice of Removal is signed in compliance with Rule 11 of the Federal Rules of Civil Procedure.

6. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after JLG's receipt of the Summons and Complaint.

7. Pursuant to 28 U.S.C. § 1446(d), JLG will serve a copy of this Notice of Removal on Plaintiff and file a copy of this Notice of Removal with the clerk of the state court.

FEIKENS, STEVENS, KENNEDY
& GALBRAITH, P.C.

JON FEIKENS (P13339)
Attorney for Defendant
660 Woodward Ave., Suite 700
Detroit, MI 48226
(313) 962-5909

and

Anthony J. Colucci, III, Esq.
Marybeth Priore, Esq.
COLUCCI & GALLAHER, P.C.
2000 Liberty Building
Buffalo, NY 14202-3695
(716) 853-4080

Dated: May 21, 2008

UNITED STATES DISTRICT COURT
FOR THE EAST DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS WENDORF,

Plaintiff,

vs.

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(313) 962-5909

PROOF OF SERVICE

The undersigned certifies that a copy of the attached **NOTICE OF REMOVAL WITH ATTACHMENTS AND THIS PROOF OF SERVICE** were served upon the attorneys of record of all parties:

Sam Serra, Esq.
43455 Schoenherr Rd., Ste. 7
Sterling Heights, MI 48313

Clerk of the Court
Macomb County Circuit Court
40 North Main Street
Mt. Clemens, MI 48043

to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with first class postage fully prepaid thereon on **May 21, 2008**. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

Stacy L. Mexico

Stacy L. Mexico

A

Recieved 4/25/08

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 16TH JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2008- 08-0555-NP

Court address: 40 N. MAIN, MT. CLEMENS, MI 48043

Court telephone no.: (586)468-2940

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), address(es), and telephone no(s).
THOMAS WENDORF 48865 BEACON SQUARE MACOMB, MI 48044 (586) 286-0180		Attn: L. David Black, President JLG INDUSTRIES INC, a foreign corporation 1 JLG Drive McConnellsburg, PA 17233-9533 D. VIVIANO P56467
Plaintiff attorney, bar no., address, and telephone no. SAM SERRA (P30507) 43455 SCHOENHERR ROAD, SUITE 7 STERLING HEIGHTS, MI 48313-1972 (586) 323-4400		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
FEB -6 '08	MAY 7 '08	[signature]

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in ________________ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ________________ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Township of Macomb, County of Macomb	City of Sterling Heights, State of Michigan
Place where action arose or business conducted: County of Macomb and State of Michigan	

February 4, 2008
Date

Signature of attorney/plaintiff SAM SERRA (P30507)

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

SUMMONS AND COMPLAINT
Case No. 08-0555-NP

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE**
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**
Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with ____________________
List all documents served with the Summons and Complaint

____

____________________ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
$		$	$

____
Signature

____
Title

Subscribed and sworn to before me on ____________ (Date), ____________ County, Michigan.

My commission expires: ____________ (Date) Signature: ____________ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of ____________

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with ____________ (Attachments)

____________ on ____________ (Day, date, time)

____________ on behalf of ____________.
Signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THOMAS WENDORF

Plaintiff,

08-0555-NP

-vs-

Case No. 2008-
Hon.

JLG INDUSTRIES, INC, a foreign corporation

D. VIVIANO
P56467

Defendant.

SAM SERRA (P30507)
Attorney for Plaintiff
SERRA & ISOPI, P.C.
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972

There is no other civil action arising out of the same transaction or occurrence as alleged in this Complaint nor has any such action been previously filed and dismissed after having been assigned a Judge in this Court.

SAM SERRA (P30507)

RECEIVED
FEB - 6 2008
CARMELLA SABAUGH
MACOMB COUNTY CLERK

CIVIL COMPLAINT

NOW COMES Plaintiff, THOMAS WENDORF, by and through his attorneys, SERRA & ISOPI, P.C., and complains against the above-named Defendant as follows:

1. That at all times material hereto, Plaintiff, THOMAS WENDORF. has been a resident of the Township of Macomb, County of Macomb, State of Michigan.

2. That at all times material hereto, Defendant, JLG INDUSTRIES, INC. has been doing business in the County of Macomb, State of Michigan.

3. That on October 10, 2006, THOMAS WENDORF, was working for Hertz Equipment Rental Corporation. The Plaintiff was operating a mobile scissors lift that was manufactured, designed and sold by Defendant to Plaintiff's employer.

4. That the model of this particular scissors lift that he was operating was a 2030 ES Model mobile scissors lift.

5. That the forward and backward movement of this mobile scissors lift is controlled by a joystick handle control that the operator can use while standing away from the machine, but which is attached to the machine by a cable.

6. That Plaintiff, THOMAS WENDORF, while standing to the left of the scissors lift was moving the lift unit forward by use of the joystick turning it to the left.

7. That Plaintiff, THOMAS WENDORF, did then position the joystick so the vehicle would go to the right but the vehicle did not respond and continued to turn to the left and turned into him, hitting his right leg and ankle.

8. That as a direct and proximate result of this unit hitting his right ankle, he did suffer severe injuries to his ankle and leg.

9. That the scissor lift injuring Plaintiff was manufactured and designed by JLG INDUSTRIES, INC and sold to Hertz Equipment Rental by it.

10. That this product was defective and the Defendant negligent in a number of manners and ways as follows:

(a) that this product was not fit for it's intended purpose in that it was supposed to be designed and manufactured so that it would respond to the guided movement by the joystick but it did not.

(b) that there was an implied and/or expressed warranty that this product was fit for it's intended purpose, that is to be mobile and allow the operator to easily guide it in one direction or the other by use of the joystick but it failed to do so.

(c) that there was a defect in the design and/or in the manufacturing of this scissors lift in that the logic control cards and/or motherboard was and/or were defective in such a way so as to not let the operator move the vehicle by use of the joystick in an appropriate manner.

(d) that the Defendant did fail to properly warn, advise or otherwise put Plaintiff and/or his employer on notice of the particular problems and defects with this machinery so that the problem could be corrected in a timely fashion and/or if not corrected in a timely fashion, to give

Plaintiff the ability to avoid the accident.

(e) that the Defendant did fail to, in a timely fashion when it knew or should have known of the problem, correct it.

(f) That the Defendant was negligent in preparing and/or testing this machine before selling it, thereby selling a product that they should have discovered was defective and would cause the type injury to Plaintiff.

(g) That there existed no proper or adequate safety devices to prevent the type of injury to Plaintiff if the joystick would not respond including a shut off switch.

(h) such other negligence that this Court may find

11. That as a direct and proximate result of the Defendant's aforementioned conduct and/or failure to act, Defendant has caused Plaintiff much pain, suffering, inconvenience, loss of enjoyment of life, scarring, permanent injury, disability, medical expenses, lost wages, lost earnings and lost benefits.

12. That the amount in controversy is in excess of Twenty Five Thousand ($25,000.00) Dollars.

WHEREFORE, Plaintiff, THOMAS WENDORF., prays that this Honorable Court grant him a Judgment in whatever amount in excess of Twenty Five Thousand ($25,000.00) Dollars this Court feels is justified plus court costs, interest, and attorney fees.

SERRA & ISOPI, P.C.

Dated: February 5, 2008

By: ____________________

SAM SERRA (P30507)
Attorney for Plaintiff
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972
(586) 323-4400

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THOMAS WENDORF

Plaintiff,

-vs-

JLG INDUSTRIES, INC, a foreign corporation

Defendant.

Case No. 2008-0555-NP
Hon. David Viviano

SAM SERRA (P30507)
Attorney for Plaintiff
SERRA & ISOPI, P.C.
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENT TO DEFENDANT

NOW COMES Plaintiff herein, THOMAS WENDORF, by and through his attorneys, SERRA & ISOPI, P.C., by Sam Serra, and under the authority of Michigan Court Rule 2.310, requests that Defendant produce for inspection and copying at the Law Offices of Serra & Isopi, P.C., located at 43455 Schoenherr Road, Suite 7, Sterling Heights, Michigan, 48313, within forty-two (42) days from the date of service of this request, the document requested.

When the word "machine" is used, it refers to the JLG 2030 ES Scissor lift SIN#0200120590 and IC number 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 which injured Plaintiff.

1. Copies of any and all contracts and invoices for the sale of the machine which injured Plaintiff. This machine being a 2030 ES JLG Scissor Lift SIN #0200120590 and IC#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.

2. Copies of all quotes for the purchase of this machine.

3. Copies of all correspondence between the manufacturer and Hertz Equipment Rental Corporation (herein after referred to as Hertz) regarding the machine before it was purchased.

4. All documents showing what warranties and guarantees were made regarding this machine.

5. Copies of the operation and maintenance manuals for the machine.

6. All operation and maintenance manuals, information, details, letters, e-mails, memos, bulletins, warnings or other documents received and/or sent after the initial sale of the machine discussing safety, warnings, repairs, the operation and maintenance of the machine.

7. All documents setting forth the machine logic.

8. All instructions and warnings given to Hertz by Defendant before the sale, during delivery and after the sale.

9. All documents showing the date the machine was delivered to Hertz.

10. All documentation showing the names, titles, addresses and telephone numbers of the persons involved in the design and manufacture of the machine.

11. All documentation showing the names, titles, addresses and telephone numbers of the persons involved in the creation of the software for this machine, updates to this software and creation of new software for the machine.

12. All documentation showing the title, name, addresses and telephone numbers of the persons creating the software programs as follows:

(a) 1.04 for this machine
(b) 1.11 for this machine
(c) Software in place at the time of the injury to Plaintiff
(d) Software replacing the software that existed at time of Plaintiff's injury.

13. All documents, including but not limited to, reports, investigations, bills, repair reports, lists, testing results and receipts evidencing all visits by employees or agents of Defendant to Hertz' Sterling Heights Facility to look at the following:

(a) The machine that injured Plaintiff
(b) Other JLG ES Scissor lifts from 2000 to the present

14. All documents showing service, investigation testing results and repairs or updates made to the machine that injured the Plaintiff after Plaintiff was injured.

15. All documents showing what repairs were made to the machine to correct the steering problem with the machine.

16. All documents showing service, investigation and testing results and repairs or updates made to other JLG ES Scissor lifts for steering problems, from 2000 to the present at:

(a) Hertz's Sterling Heights location
(b) Hertz's other locations
(c) other purchasers
(d) at JLG

17. Any and all documents showing all safety measures regarding operating the movement and/or steering recommended to Hertz by Defendant regarding the machine Plaintiff was injured on.

18. Copies of any and all records regarding warnings and instructions that were placed on, the machine by Defendant:

(a) Before sold
(b) After sold

19. Copies of any and all records regarding warnings and instructions that were placed on the machine by Defendant after Plaintiff's injury.

20. Copies of any and all records showing the involvement of any person and/or company in the recommendation and installation of safety devices, warnings and instructions for this machine model up to and through the time it was sold regarding operating the movement and/or steering of the machine.

21. Copies of any and all records showing the involvement of any persons and/or company in the recommendation and installation of safety devices, warnings and instructions for this machine model after sold but before Plaintiff's injury regarding operating the movement and/or steering of the machine.

22. Copies of any and all records showing the involvement of Defendant in the recommendation and installation of safety devices, warnings and instructions for the machine after Plaintiff's injury regarding operating the movement and/or steering of the machine.

23. Copies of any and all records regarding instructions and warnings that were given to Hertz and/or its employees regarding how to steer the machine:

(a) Before Plaintiff's injury;
(b) After Plaintiff's injury.

24. Copies of any and a ll documents, records, reports and investigations regarding outside agencies and/or companies consulted with by Defendant, regarding JLG ES Scissor machines and the safety of the operating of movement and/or steering for:

(a) The period prior to sale of the machine that injured Plaintiff
(b) After it was sold
(c) Before Plaintiff's injury
(d) After Plaintiff's injury.

25. Copies of each and every document, plan, diagram, picture, schematic, video or other record you have showing the machine which injured Plaintiff:

(a) Prior to sale of the machine;
(b) After the sale of the machine but before Plaintiff's injury;
(c) The day of Plaintiff's injury;
(d) After Plaintiff's injury.

26. Any and all documents, complaints, reports, testing and/or investigation which indicated that there was steering problems with JLG ES Scissor lifts:

(a) before Plaintiff's injury
(b) after Plaintiff's injury

27. If any repairs, alterations, additions or other changes were made by your company as a result of Plaintiff being injured, to other scissor lift machines please produce copies of any and all documents, diagrams, notes, memorandums, photographs and other documents you have showing what was done.

28. Copies of any and all diagrams, notes, memorandums, videos, photos, reports, testing results, letters and other records you have regarding changes made by your company or other persons or company to correct the steering problem to:

(a) The machine that injured Plaintiff
(b) other JLG ES Scissor Lifts owned by Hertz
(c) JLG ES Scissor Lifts owned by other persons and/or businesses
(d) JLG ES Scissor Lifts of JLG
(e) any other JLG ES Scissors Lifts

29. Copies of any and all documents, including but not limited to, memos, service bulletins, notes, letters, requests, e-mails and other documents sent by Hertz to your

company and by your company to Hertz regarding the machine that injured Plaintiff, after Plaintiff's injury.

30. Copies of any and all records requested in Plaintiff's First Set of Interrogatories to Defendant.

31. All documents showing when you first realized that the 1.11 program and/or the program you used on the machine after Plaintiff's injury, would correct the steering problem in ES models.

32. All documents showing when the 1.11 program and/or program you used on the machine after Plaintiff's injury to correct the steering problem was::

(a) Developed
(b) Finalized
(c) First installed in new scissor lifts
(d) First installed in scissor lifts to replace a prior program
(e) First installed in new ES Scissor lifts
(f) First installed in ES Scissor lifts to replace a prior program

33. All documents showing why the 1.11 software program corrected the steering problems in the machine that injured Plaintiff.

34. All service bulletins, memos, letters, e-mails or other documents advising persons that there may be a steering problem with JLG ES Scissor Lifts that would require a software change.

35. Copies of all lists of units, testing and testing results for units that were tested for steering problems for the following scissor lift units before sale and after sale for:

(a) The 2030 ES machine that injured Plaintiff
(b) The other ES units sold to Hertz which were found to have program steering problems after Plaintiff's injury.
(c) ES units that were found to have program related steering problems prior to Plaintiff's injury.

36. A copy of the 1.04 software program used and/or software program in place in the machine that injured Plaintiff at the time he was injured.

37. A copy of the 1.11 software program used and/or software program used to replace the original software program of the machine that injured Plaintiff after his injury.

38. All documents showing the difference to the steering of the machine that injured Plaintiff from the original program to the replaced one.

39. All documents showing when you first discovered that the 1.11 program has was superior to the 1.04 program in controlling the ES machine steering operation.

40. All documents showing when you first were made aware of steering problems with:

(a) JLG 2030 ES models
(b) JLG 4930 ES models
(c) JLG 2630 ES models
(d) other ES models

41. Copies of all documents, including but not limited to, Complaints, Claims, letters, e-mails, suit papers, memos, notes, bulletins from anyone advising you of steering problems with ES model prior to Plaintiff's injury.

Dated: April 21, 2008

SERRA & ISOPI, P.C.

By: ______________________
SAM SERRA (P30507)
Attorney for Plaintiff
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972
(586) 323-4400

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THOMAS WENDORF

Plaintiff,

-vs-

JLG INDUSTRIES, INC, a foreign corporation

Defendant.

Case No. 2008-0555-NP
Hon. David Viviano

SAM SERRA (P30507)
Attorney for Plaintiff
SERRA & ISOPI, P.C.
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT AND REQUEST FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that the following Interrogatories and Request for Production of Documents are submitted to you under the provisions of Michigan Court Rule 2.309 and 2.310 and the various subsections thereof.

You are required to file answers to the Interrogatories and Request for Production of Documents under oath within forty-two (42) days after service of them upon you. Where you are asked to attach copies of records, documents, etc., or proof to an answer, the request is pursuant to MCR 2.310.

Each Interrogatory and Request for Production of Document must be answered separately and fully, in writing, under oath. If the answering party objects to an interrogatory or request, the reasons must be stated in lieu of an answer.

The Answers must include such information that is available from all agents, servants, employees, representatives, private investigators, or others who are in possession of or who may have obtained information for or on behalf of the answering party.

When used in these Interrogatories, the term Defendant or any synonym thereof is intended to and shall embrace and include in addition to said Defendant, all agents, servants and employees, representatives, private investigators or others who are in possession of or who may have obtained information for or on behalf of the Defendant.

These Interrogatories and Request for Production of Documents shall be deemed continuing and supplemental answers shall be required immediately upon receipt thereof if the answering party directly or indirectly obtains further or different information from the time the answers are served to the time of trial.

When Plaintiff refers to "the machine" in these Interrogatories, it means the JLG Scissor Lift which injured Plaintiff, IC Number 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, Equipment Serial, Number: 0200120590, and Model Number 2030-ES.

1. State the name, address and official title of the person who is making and filing Defendant's answers to these Interrogatories.

ANSWER:

2. State the general history and background of the firm.

(a) Membership in industrial or professional societies;
(b) Location of plants and administrative offices;
(c) State of incorporation;
(d) Areas where the firm "does business".

ANSWER:

3. Plaintiff was injured by a JLG Scissors Unit, IC Number 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, Equipment Serial Number: 0200120590, and Equipment Model Number 2030-ES. Did your company manufacture this product/machine?

(a) When was this unit manufactured?
(b) Who was it sold to, when, for what price and the date of sale and delivery.
(c) Did your company manufacture any component part of these units?
  (1) If so, what component parts?
  (2) When were these component parts manufactured?
(d) Please provide copies of each and every document evidencing the above.

ANSWER:

4. When did your company begin manufacturing these types of machine and/or component parts?

ANSWER:

5. Describe the necessary steps for manufacture of this machine or component part, including and giving reasons for use:

(a) Source of raw materials used;
(b) Source of all component parts used;
(c) Sub-contractors involved;
(d) Quality control employed.

ANSWER:

6. Does your company also distribute said machine or component part?

ANSWER:

7. If your answer to Interrogatory No. 6 is in the affirmative, state the methods of distribution and the date of delivery of said machine to Hertz Equipment Rental or who you sold it to.

ANSWER:

8. With your answer to Interrogatory No. 7 above, submit the following:

(a) A copy of said contract or state when said contract will be available for inspection and copying by Plaintiff.
(b) Copies of each and all invoices, bills of lading, shipment and sale records of the machine and attachments thereto.
(c) State specifically the exact terms and conditions under which the above-mentioned machine was sold by Defendants to Hertz Equipment Rental, insofar as such terms and conditions are not expressly set forth in the above-mentioned contract.
(d) A copy of all warranty, guaranty, instructions, manuals, warnings and other documents given with the machinery when sold.

ANSWER:

9. If the Defendant does not distribute said machine or component part, who is the distributor?

(a) On what date was it distributed to Hertz Equipment Rental?
(b) How many distributors are there in Michigan?
(1) Please name each distributor and their address.

ANSWER:

10. Has a representative from your company or distributor ever visited Hertz Equipment Rental Corporation in Sterling Heights, Michigan in the past seven (7) years?

(a) If so, when?
(b) Please give the name and address and title of the person making said visit or visits.
(c) Please give the purpose for each visit.
(d) Please state what was done, if anything, by this person.

(e) Provide copies of each and every document regarding the above, including records regarding what was said, what was done, what was viewed, what was repaired, what was tested, the subject of the visit and who requested the visit and why.

ANSWER:

11. Did your company design and develop this model machine or component part?

ANSWER:

12. If your answer to Interrogatory No. 11 is yes, state:

(a) The year in which it was first marketed by Defendant;
(b) Was it designed and manufactured by Defendant or to Defendant's specifications? If the answer is no, then, state the name and address of the designer and/or manufacturer of it and what, if any, business relationship or connection exists or existed at any time between Defendants and said designer and/or manufacturer.

ANSWER:

13. Did your company design for this machine the steering system:

(a) Mechanical parts;
(b) Electrical parts;
(c) Software.
(d) Other components and if so, state what.

ANSWER:

14. If you answered yes to any of the above, please state the following:

(a) Name, title, address and telephone number of persons involved and their involvement.,
(b) Dates designed.

ANSWER:

15. If you answered no to Interrogatory No. 13, then place state for each subsection:

(a) Name, title, address and telephone number of persons involved and their Involvement in the design of the steering system, mechanical, electrical, software and other components.
(b) Dates designed.

ANSWER:

16. State the name and address of the person or persons in active charge of safety engineering for Defendants in the years of the manufacture of this model machine or component part in question and in the year this machine was manufactured.

ANSWER:

17. For what purpose was the machine or component part designed or developed?

ANSWER:

18. Were there any local or national engineering or safety code standards established for said machine or component part regarding its steering system?

(a) What is their source?
(b) State specifically what they are.

ANSWER:

19. Has the National Safety Counsel of American Standards Association, at any time recommended to Defendant or any of their subsidiaries concerning any safety device installed or designed for installation on Defendants' machine or component part for the protection of persons operating its movement and/or steering the unit?

ANSWER:

20. If the preceding question is answered in the affirmative, attach copies of all such information to your answer or state when and where all such correspondence will be made available to Plaintiff for inspection and copying.

ANSWER:

21. Have Defendants or any of their subsidiaries at any time sent or received correspondence, diagrams, blueprints, photographs or similar descriptive material from independent companies relating to the designing, manufacturing, developing or installation of safety devices for the protection of persons in regard to said machine or component part who are operating the movement and/or steering the unit?

ANSWER:

22. If Interrogatory 21 above is answered in the affirmative, attach copies of all such information to your answer or state when and where the same may be inspected and copied by Plaintiff.

ANSWER:

23. If your answer to Interrogatory No. 21 is in the affirmative, state for each:

(a) Their nature and when made;
(b) Who performed said tests or investigations;
(c) What were the results?
(d) Please attach copies of any reports to your answers.

ANSWER:

24. If an independent concern performed these tests or investigations, give the name(s) and information listed in the above question.

ANSWER:

25. What types and kinds of tests and investigations were made before this type model machine was sold regarding the ability of an operator to steer these machines?

(a) Were any changes made regarding the steering once these tests were done? If so, when, what changes made and by who.
(b) Was any testing done on the software logic and/or hardware of these machines, vis-a-vis the ability of the machine operator to steer these machines and if so, please state what in particular what they were, when and who performed by, their results and if charges were made.
(c) Please attach copies of all documents evidencing the above.

ANSWER:

26. Were the tests and investigations listed in the preceding question employed in the manufacture of the machine in question?

ANSWER:

27. Who took part in said tests and investigations and what is (are) his/her/their job title(s) and qualifications?

ANSWER:

28. Will you furnish the Plaintiff with reports regarding said tests and investigations to be copied? If so, please attach copies to your Answers.

ANSWER:

29. Did you become aware of a problem with the steering of ES Scissors Lift machines after the machine was sold to Hertz Equipment Rental Corporation, but before Plaintiff was injured?

ANSWER:

30. If answered in the affirmative, give information requested in Interrogatory 29.

ANSWER:

31. Were there any notations of danger or warnings or instructions for its use printed on the machine or component part when sold?

(a) Were any of these regarding the movement of the machine from one location to the other?

(b) Were any of these regarding how to operate the machinery to make it move from one location to the other, and if so, what were they?

(c) Were any of these regarding someone who was near the machine while it was being moved from one location to the other and if so, what were they?

ANSWER:

32. If answered Interrogatory No. 31 in the affirmative, state:

(a) Each location.
(b) The wording.
(c) The size and color of the printing.

ANSWER:

33. Were there any instructions, parts, manuals, warranties, guarantees, work manuals or other documents provided with the machine when sold to Hertz?

(a) Please state in detail what they were and what they contained.
(d) Please provide a copy of these to Plaintiff.

ANSWER:

34. State the full name, address and job title of the person in Defendant's employ who has permanent responsibility for compliance with local, national or other industrial standards and specifications for the machine or component part in question for the following periods:

(a) At the time that the machine was manufactured.
(b) After sold;
(c) Presently.
(d) Please give the full title of each of these persons and if they no longer work with your company, please state their last known home address, including phone number and current business address, including phone number.

ANSWER:

35. State the exact citation of all safety standards and specifications for the operation and manufacture of the machine in question regarding operating the movement and/or steering the unit, on the day Plaintiff suffered his injury.

ANSWER:

36. Have you received notice from any person who claimed the following:

(a) That they had steering problems with an ES model machine.
(b) That a person and/or property had been hit by this model machine because of steering problems.
(c) That they had steering problems with an ES model machine.
(d) That a person and/or property had been hit by an ES model machine because of steering problems.

ANSWER:

37. If answered yes to any subsection of Interrogatory No. 36, in the affirmative, please state:

(a) The date.
(b) The name, address and telephone number of persons giving you notice.
(c) The facts and circumstances. Identify the steering problem complained of.
(d) Name, address and telephone number of the person operating the machine.
(e) Name, address and telephone number of the person hit by the machine or owner of property.

ANSWER:

38. Were any reports made of such accident?

(a) Give the name, address and telephone number of person making the report.
(b) State what the report says.
(c) Attach a copy to your Answers.

ANSWER:

39. If you answered yes to any subsection of Interrogatory No. 36, was an investigation performed by your company, by someone on your behalf, or by other regarding the claimed steering problem, and if so:

(a) Give the name, address, telephone number and title of the person performing the investigation.

(b) Please state the date and/or dates of the investigation.
(c) Please state the results of the investigation.
(d) Please state whether the machine was tested, what tests were done and the result.
(e) Please state what the steering problem complained of was and whether it was duplicated.
(f) Was a steering problem found and if so, identify its problem and what caused it.
(g) Was the problem corrected or repaired and if so, how was it correct and/or repaired and by who giving their name, address and telephone number.
(h) Attach copies of all investigative, testing and repair reports.

ANSWER:

40. Has there ever been a lawsuit against Defendant arising out of an incident where a person has been hit or property damaged by this type ES model machine and/or similar ES model machine in the last ten (10) years where it was claimed there was a problem with the steering of the scissor lift?

(a) When.
(b) The jurisdiction, title of the cause and case number.
(c) The claim made.
(d) Please give the name of the attorney representing the Plaintiff and his address.
(e) Please state what the disposition was of this case.
(f) Please attach a copy of the Complaint to your Answer.

ANSWER:

41. Do you allege any comparative negligence?

ANSWER:

42. If answered in the affirmative, state:

a) Every fact which you believe to indicate same.

ANSWER:

43. Do you allege any assumption of the risk by the Plaintiff?

ANSWER:

44. If answered in the affirmative, state:

a) Every fact which you believe to indicate the same.
b) What risks or dangers do you allege the Plaintiff assumed?

ANSWER:

45. State the names and last known addresses of all witnesses to the accident in question.

ANSWER:

46. State the name and last known address of all persons investigating, in any way, the accident in question.

(a) Please state the name of the person and/or persons with their titles, addresses and phone numbers.
(b) Please state what these persons did and where they did it and on what date they did it.
(c) Please state what was the result of their investigation.
(d) Did they make out a report regarding their investigation and if so, please give the date of that report and the content of that report. Was the machine tested? How and what were the results of that test?
(e) Please attach copies of any and all records of the above.

ANSWER:

47. State the name, address and expertise of all experts which Defendant may use in this litigation, and with reference to each expert, state the following:

(a) The educational background of said expert;
(b) Whether or not said expert has ever made an examination of the product in question, and if so, whether or not (s)he has given any report or opinion concerning same;
(c) State the facts and sum and substance of opinions and the basis upon which the expert has formulated said opinions and/or reports;
(d) If said report is in writing, attach a copy of same to the answers to these Interrogatories.

ANSWER:

48. When did your company first become aware of the incident with Plaintiff?

(a) Who made you aware of the incident?
(b) Who from your company received notice, give the name and title.
(c) What was done after this information was given?
(d) What correspondence or communications were sent between you and Hertz Equipment Rental regarding this incident?
(e) Please attach copies of any and all correspondence regarding this incident between Hertz Equipment Rental Corporation and Defendant.
(f) Did someone from your company go to investigate this incident?
  (1) If so, please state the name of the person and/or persons with their titles, addresses and phone numbers.
  (2) Please state what these persons did and where they did it and on what date they did it.
  (3) Please state what was the result of their investigation.
  (4) Did they make out a report regarding their investigation and if so, please give the date of that report and the content of that report. Was the machine tested? How and what were the results of that test?
  (5) Please attach copies of any and all records of the above.

ANSWER:

49. Were any changes made by your company to the 2030 ES Scissors Lift that injured Plaintiff after it was sold to Hertz? If so,

(a) What changes were made?
(b) Who made the change?
(c) Why was the change necessary?
(d) Did the change correct any problem related to the incident that caused Plaintiff's injury?

ANSWER:

50. Did your investigators determine that there was a problem with the steering of certain JLG ES Scissors models sold to Hertz Equipment Rental and located at their Sterling Heights, Michigan location? If so,

(a) Please state in detail what was the problem that was discovered and to which units.
(b) Please state in detail what the cause of the problem was.
(c) Please state what was done to correct the problem and by who and on what dates.
(d) Was a service bulletin ever issued regarding this problem and if so, when, by who and what did the bulletin say?
(e) Attach a copy of all documents evidencing the above.

ANSWER:

51. What software program regarding steering the unit was used in the 2030 ES Scissors Lift that injured Plaintiff prior to his being injured?

(a) Who developed this software, include names, addresses and telephone numbers?
(b) When was the software developed?
(c) What involvement did the software have in the controlling of the steering of the unit?
(d) Was this software replaced after Plaintiff's injury and if so, by whom, when and for what reason?
(e) Please attach a copy of this software and documents explaining this software, its use and how to install it, to your answers.

ANSWER:

52. If you replaced the software program in the 2030 ES Unit that injured Plaintiff after his injury, please state the name of the software program it was replaced with.

(a) Please state when this software program was developed.
(b) Please state who developed the software program, including the name, addresses and telephone numbers.
(c) Please state when this software program was ready to be installed in Scissor Lift machines.
(d) Please state when this software program was first installed in a new scissor lift machine and by who, giving their name, title and address.
(e) Please state where the program was first used to replace any existing software program in a ES machine, state why replaced and by who giving their name, title and address.
(f) Please state the difference between this software program and the previous software program used.
(g) Did this software program deal with the steering of the Scissors units and if so, how did it deal with it?
(h) How was the interaction of this program with the steering of the units different from the software previously developed?

ANSWER:

53. If you have changed the software in any other JLG ES Scissor Lifts owned by Hertz Equipment Rental after Plaintiff's accident, please state the following:

(a) The name, model number, equipment year, IC number and serial number of each piece of equipment in which the program was updated.
(b) State the reason for the program being updated.
(c) Did you find that there was problem with the steering for these particular units and if so, when and what was the problem?
(d) Please give the name, title, address and telephone number of each person investigating, testing, repairing and installing new software in these machines.
(e) Attach copies of documents evidencing the above.

ANSWER:

54. If you have changed the software in any other JLG ES Scissor Lift machines after they have been sold, please state the following:

(a) The name, model number, equipment year, IC number and serial number of each piece of equipment in which the program was updated.
(b) State the reason for the program being updated.
(c) Did you find that there was problem with the steering for these particular units and if so, when and what was the problem?
(d) Please give the name, title, address and telephone number of each person investigating, testing, repairing and installing new software in these machines.
(e) Attach copies of documents evidencing the above.

ANSWER:

55. Was there ever a service memo, bulletin or other documents sent to purchasers of your ES Scissor Lift units indicating any of following in the last six (6) years?

(a) That there was a problem with the steering of any of the ES Scissor units manufactured by you and if so, when and what was said?
(b) That there needed to be a software update for any of the ES Scissor units manufactured by you and if so, when and what was said?
(c) Please attach a copy of the above service memos, bulletins, and other documents to your Answer.

ANSWER:

56. Were any pictures and/or videos taken of the Scissors unit that injured Plaintiff? If so,

(a) Please state the name, address and telephone number and title of the person taking the pictures and/or videos.
(b) Please describe each picture and/or video and what they show.
(c) Please attach a copy of these pictures and/or videos to your Answers.

ANSWER:

57. Were any pictures and/or videos taken of other ES Scissor units sold to Hertz which were claimed to have steering problems? If so:

(a) Please state the name, address and telephone number and title of the person taking the pictures and/or videos.
(b) Please describe each picture and/or video and what they show.
(c) Please attach a copy of these pictures and/or videos to your Answers.

ANSWER:

58. As to the 2030 ES Scissors Unit which injured Plaintiff, please state the following:

(a) Were any tests conducted on the steering of this vehicle prior to selling it to Hertz Equipment Rental Corporation, and if so, please state what the results were of that testing.

(b) After the unit was sold, did anyone from your company test the steering on this equipment and if so, please state who, giving their name, address and title, when it was conducted and the results of that testing.

(c) Please state each and every date that this particular unit was inspected, tested, looked at or for some other reason seen by one of your employees and/or agents.

(1) Please give the name, address, telephone number and title of the person performing the investigation.

(2) Please state what the results were of this.

(3) Please state what was done, if anything to the machine afterwards and if this was to correct a particular problem.

(4) Please state what the problem was.

ANSWER:

Dated: April 21, 2008

SERRA & ISOPI, P.C.

By: ____________________

SAM SERRA (P30507)
Attorney for Plaintiff
43455 Schoenherr Road, Suite 7
Sterling Heights, MI 48313-1972
(586) 323-4400

"I declare under penalty of perjury that I have read the foregoing instrument and that the contents are true to the best of my own information, knowledge and belief."

Dated: ____________________ ____________________________________

Subscribed and sworn to before me
this _____ day of ____________________, 2008.

____
, Notary Public
________________County, State of Michigan
Acting in the County of ________________
My commission expires: _______________

By: ______________________________

Attorney for Defendant

CIVIL COVER SHEET

County in which action arose Macomb

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Thomas Wendorf

(b) County of Residence of First Listed Plaintiff: Macomb County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Sam Serra, 43455 Schoenherr Rd, Ste.7
Sterling Hts, MI (586)323-4400

DEFENDANTS

JLG Industries, Inc.

County of Residence of First Listed Defendant: McConnellsburg, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Jon Feikens, 660 Woodward Ave., Ste. 700
Detroit, MI 48226 (313) 962-5909

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Case: 2:08-cv-12229
Judge: Steeh, George Caram
MJ: Whalen, R. Steven
Filed: 05-21-2008 At 01:31 PM
REM: WENDORF V. JLG IND INC (NH)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☒ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE
- ☐ 610 Agriculture
- ☐ 620 Other Food
- ☐ 625 Drug Relate of Property
- ☐ 630 Liquor Law
- ☐ 640 R.R. & Tru
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- XX 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 USC Sections 1441 and 1446

Brief description of cause:
Personal injury allegedly arising from use of an aerial work platform

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ in excess of 25,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____ DOCKET NUMBER ____

DATE 5/21/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ____ AMOUNT ____ APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

...RSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

Notes :